

POLICY:-	
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RESPONSIBILITY:-	
Draft Policy developed by:	Chief Executive Officer
Committee/s (if any) consulted in the development of this policy:	Nil
Responsibility for implementation:	Chief Executive Officer
Responsibility for review of Policy:	Director of Finance and Administration

POLICY STATEMENT

Business dealings between the Upper Lachlan Shire Council and the private sector are extensive and may, on occasions, raise sensitive ethical issues. The policy sets out Council's position on business ethics and provides guidelines to Councillors, Council Officers, Contractors, volunteers and people with whom they conduct business.

The policy also provides guidance on how Council will deal with the requirements of the National Competition Policy, including the management of competitive neutrality complaints.

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1. APPLICATION

This policy applies to all Council's business activities as defined under the National Competition Policy, as well as to all pricing, buying and selling of goods and services.

It replaced Council's *Competitive Neutrality Policy* on 25 August 2005.

2. DEFINITIONS

Impartiality and Fairness: This is about being objective, even-handed and reasonable. An impartial person will try to objectively establish criteria for determining best value for money and will work hard to objectively assess each quotation, expression of interest or tender against criteria. A fair person would not, for example, change or introduce new selection criteria midway through the tendering process without advising all tenderers.

Probity: This is about ensuring Upper Lachlan Shire Council business practice, processes, procedures and documentation used in carrying out the objectives in the Operational Plan, Delivery Plan, Community Strategic Plan, Long Term Financial Plan, Infrastructure Plan and Workforce Plan follow good governance and are robust, transparent and capable of external audit.

Value for Money: This is determined by considering all the factors that impact on benefits and costs e.g. reliability, quality, timeliness and service, initial and ongoing costs. Value for money does not necessarily mean the lowest price, but price is a major factor in determining value for money if the product or service meets other essentials as set out above.

3. GENERAL PRINCIPLES

The Upper Lachlan Shire Council expects all its representatives, staff, volunteers and Councillors to behave in accordance with the principles set out in its *Statement of Ethical Principles* (see Appendix 1), and its *Code of Conduct*. The Council also expects private industry and its representatives to maintain similar standards of ethical conduct in their dealings with Council as set out in Council's *Statement of Business Ethics* (see Appendix 2).

In line with the above Codes and Statements, and the principles of the National Competition Policy, Council will ensure:

- (a) that in its business transactions it will seek to get the best possible value for public money;
- (b) that it will demonstrate sound probity practises, including impartiality, confidentiality, fairness, and managing conflicts of interest, at all stages of the business process;
- (c) that Council's business does not intentionally or unwittingly prevent or constrain the entry of external service providers who have the capability or potential to deliver better quality or more efficient services;

- (d) the removal of regulations which intentionally or unwittingly prevent or constrain suitable business investment or activity in the Shire and thereby employment;
- (e) that it will better define the purpose of its services and remove any waste and inefficiency that may exist within its business activities as a consequence of being sheltered from competition;
- (f) that the prices of Council services represent value for money and are not excessive compared to other local government areas; and
- (g) the assessment and selection of service providers is not distorted by bias or other inappropriate factors pertaining to ownership and are based upon the comparable efficiency of the service provider.

4. RESPONSIBILITIES

4.1 Councillors and Staff of the Upper Lachlan Shire Council

The Upper Lachlan Shire Council expects its Councillors and staff and volunteers to:

- (a) respect and follow Council's policies, procedures and delegations;
- (b) treat all suppliers and potential suppliers of goods and services equitably;
- (c) promote fair and open competition while seeking best value for money;
- (d) protect confidential information;
- (e) meet or exceed public interest, probity and accountability standards;
- (f) avoid situations where private interest could conflict with public duty;
- (g) never solicit or accept remuneration, gifts or other benefits from a supplier for the discharge of official duties;
- (h) respond promptly to reasonable requests for advice and information.

4.2 Suppliers of Goods and Services

The Upper Lachlan Shire Council requires all suppliers of goods and services to Council to:

- (a) respect the conditions set out in documents supplied by Council;
- (b) respect the obligation of Council staff to abide by Council's Procurement Policy;
- (c) abstain from collusive practices;
- (d) prevent the unauthorised release of privileged information, including confidential Council information;
- (e) refrain from discussing Council dealings with the media, except with Council's consent;
- (f) refrain from offering Council employees or Councillors any financial or other inducement which may give any impression of unfair advantage;
- (g) take all reasonable steps to ensure that goods and services provided to Council are not the product of Modern Slavery within the Modern Slavery Act 2018;
- (h) assist the Council to prevent unethical practices in our business relationships.

Guidelines for suppliers are set out in Council's *Statement of Business Ethics*. (see Appendix 2)

5. THE IMPORTANCE OF COMPLIANCE

All suppliers of goods and services to the Council are required to comply with this Code and this compliance will not in any way disadvantage suppliers.

However, should suppliers not comply with these ethical requirements when doing business with Council, then such actions could lead to the following consequences:

- (a) termination of contracts;
- (b) loss of future work;
- (c) loss of reputation;
- (d) investigation for corruption;
- (e) matters being referred for criminal investigation.

6. THE NATIONAL COMPETITION POLICY

The NSW Government issued the "NSW Government Policy Statement on the application of National Competition Policy to Local Government" and the following are requirements placed upon Council by the National Competition Policy:

6.1 Competitive Neutrality

Council is required to implement competitive neutrality principles under the terms of the "Competition Principles Agreement".

"Competitive Neutrality" is the principle that government, whether Commonwealth, State or Local, should operate without net competitive advantages over other businesses as a result of their public ownership.

6.2 Council's Business Activities

Council must identify its significant business activities.

Council's defined business activities are subject to the provisions of the National Competition Policy and Competitive Neutrality. The following guidelines will define what a *business activity* is:

- (a) a business activity will involve the supply of goods and services for a fee or charge;
- (b) a business activity is likely to be subject to competition by other providers;
- (c) if an activity is subject to competition, is significant to the people who are supplied by it and has an impact on the local, regional or broader economy, then there is likelihood that it is a business activity;
- (d) an activity which is intended by Council to make a profit may be regarded as a business activity;

- (e) any activity in which Council bids for external contracts should be regarded as a business activity.

Once Council has determined which of its activities may be classified as business activities, it must determine whether they are significant enough to be subject to the competitive neutrality principles. There are two categories of business activities:

- (a) Category 1 businesses (\$2M and above annual gross operating income), or
 - (b) Category 2 businesses (less than \$2M annual gross operating income)
- Council's significant business activities are identified in its Annual Report and Financial Statements each year.
- Note: Council operates three Category 2 businesses – water supply scheme, sewerage scheme and domestic waste management service.

7. PROCEDURES FOR IMPLEMENTING COMPETITIVE NEUTRALITY

7.1 Applying the Corporatisation Model

A Category 1 business must comply with corporatisation requirements set out in the *Policy Statement*. In particular, it must meet the following requirements:

- (a) it must be capable of being separately identified within the operations of Council;
- (b) it must have a separate internal accounting and reporting framework to Council;
- (c) it must apply full cost attribution including:
 - (i) tax equivalent regime payments,
 - (ii) debt guarantee fees, where businesses benefit from Council's borrowing position by comparison with commercial rates, and
 - (iii) return on capital invested;
- (d) it must make explicit any subsidies paid to the business activity;
- (e) it must operate within the same regulatory framework as private businesses.

A Category 2 business has less stringent requirements. However, it must meet these requirements:

- (a) it must make explicit any subsidies paid to the business activity;
- (b) it must operate within the same regulatory framework as private businesses;
- (c) it should apply full cost attribution where practicable.

7.2 Applying Competitive Neutrality Pricing

Council is required to include private sector pricing factors within its business activity pricing. Council's *Revenue Policy* and *Pricing Policies* are advertised each year in Council's Operational Plan. The *Statement of Pricing Policy* sets out the basis upon which costs will be attributed and the principles upon which

the decisions have been made. Council's Policy contains a mix of full cost pricing, return rate pricing, partial cost pricing and market/reference pricing.

- (a) Full cost pricing is the recovery of all direct and indirect costs involved in the provision of a service. It also involves the recovery of the financial cost of capital tied up with service provision (by incorporating depreciation of assets);
- (b) Return rate pricing is a situation where prices are set not only to recover all costs, but also to earn some profit;
- (c) Partial cost pricing is providing services at a price which recovers less than the full cost incurred in service delivery. In this situation Council seeks to recover only the direct costs involved in providing services so as to provide a benefit to the community. Any of these subsidies must be made explicit.
- (d) Market/reference pricing refers setting a pricing structure based on current market fee structures and may have little relationship to the cost of providing the service.

7.3 Competing for Tenders

Although Council does not competitively tender for its own contracts, it does occasionally tender to provide private works or services. Council should not utilise subsidies to enable it to win tenders against private businesses. Return rate pricing principles should normally be utilised when setting prices in these circumstances.

8. HANDLING COMPETITIVE NEUTRALITY COMPLAINTS

Council is required by the *Policy Statement* to establish a complaints handling system for competitive neutrality complaints. Council has the responsibility of resolving complaints in the first instance, with a review by the State Government where and when warranted.

8.1 What is a Competitive Neutrality Complaint?

A complaint regarding competitive neutrality is:

- (a) A complaint that Council has not met its requirements under the *Policy Statement* or *Pricing and Costing for Council Businesses – A Guide to Competitive Neutrality*. This includes a concern that Council has not established an effective complaints handling mechanism;
- (b) a complaint that Council has not abided by the spirit of competitive neutrality in the conduct of a business activity.

A competitive neutrality complaint is not:

- (a) a complaint regarding the level of service provided by a business activity e.g. a mobile garbage bin not collected;
- (b) a complaint regarding the cost of the service, unless the Upper Lachlan Shire Council has not costed the service to take competitive neutrality into account;

- (c) a complaint regarding the trade practices laws and their application to the Upper Lachlan Shire Council.

8.2 How to Lodge a Competitive Neutrality Complaint

A competitive neutrality complaint should be made in writing, addressed to the Chief Executive Officer, and should contain sufficient information about the alleged breach for Council to fully investigate the complaint.

Should a complainant wish to discuss their complaint prior to making a complaint in writing, they should contact Council's Public Officer on telephone (02) 4830 1000 or by email council@upperlachlan.nsw.gov.au.

A complaint may be referred directly to one of the following bodies:

- (a) The Independent Commission Against Corruption (ICAC). Complaints can be provided in writing, by telephone or arranging an interview with an ICAC Officer. To provide information or make an enquiry:

Write to: ICAC, GPO Box 500, Sydney NSW 2001

Phone: (02) 8281 5999 or toll free 1800 463 909 (9am to 5pm)

Email: icac@icac.nsw.gov.au

Information explaining the role of the ICAC and how to report corrupt conduct is available on the ICAC website www.icac.nsw.gov.au

- (b) The NSW Ombudsman. To contact the NSW Ombudsman:

Write to: NSW Ombudsman, Level 24, 580 George Street, Sydney, NSW 2000

Phone: (02) 9286 1000 or toll free 1800 451 524

Email: nswombo@ombo.nsw.gov.au

Information concerning the role of the Ombudsman is available the NSW Ombudsman website www.ombo.nsw.gov.au

- (c) The Australian Competition and Consumer Commission (ACCC).

Write to: Chairman, Australian Competition and Consumer Commission
GPO Box 3648, Sydney, NSW 2001

Phone: (02) 9230 9133 or toll free 1300 302 502

ACCC website www.accc.gov.au

8.3 Time Limits

Complaints will be acknowledged within 7 days and responded to by Upper Lachlan Shire Council within 30 days of the receipt of the complaint.

If the complaint requires detailed investigation, the complainant will be informed of progress at regular intervals.

8.4 Remedies

If the investigation finds that Council has not met its requirements under the National Competition Policy, Council gives an undertaking that it will alter its business practices to ensure compliance and will offer a written apology to the complainant.

Should the complainant not be satisfied with the findings of the Council investigation, then they may refer the complaint to the bodies listed in clause 8.2 of this policy.

8.5 Confidentiality

All competitive neutrality complaints received will be determined by the Council in the strictest confidence.

9. COMMUNITY SERVICE OBLIGATIONS

Council recognises it's many important community, environmental and social obligations and that there is no intrinsic or philosophical conflict between these obligations and making Council's operations more competitive. In fact, competition principles will:

- (a) encourage better customer service for those who depend upon the services which meet these obligations;
- (b) reduce the costs of these services to users;
- (c) free up funds which might be redirected to community, environmental or social priorities;
- (d) make environmental, social and community service obligations more transparent and thereby open to scrutiny and prioritisation.

However, pricing decisions will take into account Council's community service obligations, particularly in terms of equity. Ensuring that there is equitable access to Council services may mean that Council will choose to subsidise some of its services.

10. REVIEW & VARIATION

This policy will be reviewed regularly to ensure that it conforms to current legislation.

Council reserves the right to vary or revoke this document.

11. RELEVANT LEGISLATION, COUNCIL POLICY AND PROCEDURES

The following Legislation and Council Policies and documents that are relevant to this Policy include:-

- Access to Information Policy;

- Australian Audit Standard AUS210 / ASA240;
- Anti Discrimination Act 1977;
- Bribes, Gifts and Benefits Policy;
- Child Protection (Working with Children) Act 2012;
- Child Protection (Working with Children) Regulation 2013;
- Children & Young People (Care & Protection) Act 1998;
- Children's Guardian Act 2019;
- Care and Protection Regulation 2022;
- Child Safety and Wellbeing Policy;
- Code of Conduct;
- Companion Animals Act 1998;
- Complaints Management Policy and Procedures;
- Corporate Credit Card Policy;
- Council's Code of Meeting Practice;
- Crimes Act 1900;
- Customer Service Charter;
- Delegations of Authority Procedure;
- Disability Inclusion Act 2014;
- Disciplinary Policy;
- Drug and Alcohol Policy;
- Employee Assistance Program Policy;
- Employment and Retention Policy;
- Environmental Planning and Assessment Act 1979;
- Equal Employment Opportunity Act 1987;
- Equal Employment Opportunity (EEO) Management Plan;
- Fair Work Act 2009;
- First Aid Policy;
- Flexible Work Arrangements Policy & Procedure;
- Fraud and Corruption Policy;
- Government Information (Public Access) Act 2009;
- Government Information (Public Access) Policy;
- Government Information (Public Access) Regulation 2018;
- Grievance Policy;
- Harassment Policy;
- Health Records and Information Privacy Act 2002;
- Human Resource Training Plan;
- Human Resource Succession Plan;
- Independent Commission against Corruption Act (ICAC) 1988;
- Industrial Relations Act 1996;
- Injury Incident Management Procedures;
- Interaction between Councillors and Staff Policy;
- Internet and Email Policy;
- Local Government Act 1993;
- Local Government (General) Regulation 2021;
- Loss of Drivers Licence Policy & Procedure;
- Manual Handling Policy;
- Mobile Phone Policy;

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- Modern Slavery Act 2018;
 - NSW State Records Act 1998;
 - Payment of Expenses and Provision of Facilities Policy;
 - Performance & Misconduct Policy;
 - Privacy and Personal Information Protection Act 1998;
 - Privacy Management Plan;
 - Private Use of Council Motor Vehicles Policy;
 - Private Works (Projects and Plant Hire) Policy;
 - Protective Clothing Policy;
 - Procurement Policy;
 - Public Interest Disclosures Act 2022;
 - Public Interest Disclosures – Internal Reporting Policy;
 - Records Management Policy;
 - Recruitment and Selection Policy;
 - Secondary Employment Policy;
 - Section 355 Code of Meeting Practice;
 - Section 355 Committee Policy;
 - Service Recognition Policy;
 - Smoking in the Workplace Policy;
 - Staff Training Policy;
 - Standards Australia 8000 series;
 - Statement of Business Ethics;
 - Statement of Ethical Principles;
 - Sun Protection Policy;
 - Time in Lieu of Overtime Policy;
 - Trade Practices Act 1974;
 - Upper Lachlan Shire Council Community Strategic Plan;
 - Upper Lachlan Shire Council Delivery Program;
 - Upper Lachlan Shire Council Operational Plan;
 - Volunteers Policy and Volunteers Procedure;
 - Workforce Plan;
 - Workers Compensation Act 1987;
 - Work Health & Safety Policy;
 - Work Health & Safety Act 2011;
 - Work Health & Safety Regulations 2017;
 - Any other relevant legislation and guidelines as applicable.

APPENDIX 1: STATEMENT OF ETHICAL PRINCIPLES

All Councillors and staff of the Upper Lachlan Shire Council will be guided by the following principles:-

Selflessness

- ☐ Serving public over private interests;
- ☐ Avoiding private gain at public expenses;
- ☐ Not accepting gifts and benefits of more than nominal value;
- ☐ Reporting all offers of inducement or suspected bribes.

Openness

- ☐ Giving and revealing reasons for decisions;
- ☐ Revealing other avenues available to the client or business;
- ☐ Offering all information not subject to legal or privacy restrictions;
- ☐ Communicating clearly.

Honesty

- ☐ Obeying the law;
- ☐ Following the letter and spirit of policies and procedures;
- ☐ Observing codes of conduct;
- ☐ Fully disclosing actual or potential conflicts of interest.

Accountability

- ☐ Recording reasons for decisions;
- ☐ Submitting to scrutiny;
- ☐ Keeping proper records and establishing audit trails;
- ☐ Maintaining confidentiality.

Objectivity

- ☐ Fairness to all;
- ☐ Impartial assessment;
- ☐ Merit selection in recruitment and in purchase and sale of Council resources;
- ☐ Considering only relevant matters.

Courage

- ☐ Having the courage to uphold these principles;
- ☐ Reporting suspected wrongdoing;
- ☐ Embracing necessary change;
- ☐ Giving advice fearlessly and frankly.

Appendix 2: STATEMENT OF BUSINESS ETHICS

What you can expect from us

The Upper Lachlan Shire Council will ensure that all its policies, procedures and practices related to tendering, contracting and the purchase of goods and services are consistent with best practice and the highest standards of ethical conduct.

Council's staff is bound by Council's comprehensive *Code of Conduct for Councillors, staff and delegates of Council* and *Code of Business Practice*. When doing business with the private sector, Council staff are accountable for their actions and are expected to:

- ☐ Use public resources effectively and efficiently.
- ☐ Deal fairly, honestly and ethically with all individuals and organisations.
- ☐ Avoid any conflicts of interest (whether real or perceived).

In addition, all Council procurement activities are guided by the following core business principles:

- ☐ All potential suppliers will be treated with impartiality and fairness and given equal access to information and opportunities to submit bids.
- ☐ All procurement activities and decisions will be fully and clearly documented to provide an audit trail and to allow for effective performance review of contracts.
- ☐ Tenders will not be called unless Council has a firm intention to proceed to contract.
- ☐ The Council will not disclose confidential or proprietary information.

What we expect from you

Council requires that all private sector providers of goods and services observe the following principles when doing business with the Council:

- ☐ Act ethically, fairly and honestly in all dealings with the Council.
- ☐ Respect the conditions set out in documents supplied by Council.
- ☐ Respect the obligation of Council staff to abide by Council's *Purchasing – Acquisition of Goods and Services Policy*.
- ☐ Abstain from collusive practices.
- ☐ Take all reasonable measures to prevent the disclosure of confidential Council information.
- ☐ Refrain from offering Council employees or Councillors any financial or other inducement which may give any impression of unfair advantage.
- ☐ Refrain from discussing Council business or dealings in the media, except with Council's consent.

- ☐ Assist the Council to prevent unethical practices in our business relationships.

Why you should comply with this Statement

You should be aware of the consequences of not complying with Council's ethical requirements when doing business with the Council. Demonstrated corrupt or unethical conduct could lead to:

- ☐ Termination of contracts;
- ☐ Loss of future work;
- ☐ Loss of reputation;
- Investigation for corruption;
- Matters being referred for criminal investigation.

Finding out more about Council's business practices

If you have any questions regarding this Statement or to provide information about suspected corrupt conduct, please contact Council's Chief Executive Officer directly by letter, phone, fax or email at the contact details shown below.

Chief Executive Officer
Upper Lachlan Shire Council
PO Box 42
GUNNING NSW 2581

Tel: (02) 4830 1000

Email: council@upperlachlan.nsw.gov.au

Many of Council's policies, including its *Code of Conduct*, *Code of Business Practice* and **Procurement Policy** are available for reading or download on Council's website at www.upperlachlan.nsw.gov.au